Supreme Court, U.S.
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No. 07-_____

IN THE
SUPREME COURT OF THE UNITED STATES

JOAN HEFFINGTON
And on Behalf of Major Jack G. Farr
(U.S.A.F. Deceased)
Petitioner, Pro Se,

v.

UNITED STATES GOVERNMENT
DEPARTMENT OF DEFENSE
Respondents.

On Petition for Writ of Certiorari
To The United States Supreme Court

PETITION FOR WRIT OF CERTIORARI

Joan Heffington
Petitioner, Pro Se
And on Behalf of
Major Jack G. Farr
(U.S.A.F. Deceased)
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December 21, 2007

Questions Presented For Review

1. Whether petitioner was denied due process of law under the 5th and 14th amendments to the United States Constitution, and whether an abuse of discretion occurred when petitioner was denied her rights under the Civil Rights Act of 1964 (42 USC 1983).

2. Due to the defendants' criminal acts (war crimes/intentional fraud) and denying petitioner legal counsel, whether petitioner should have been held to the same standards as attorneys, and whether she had the right to be appointed legal representation under the 6th Amendment.

3. Whether the Tenth Circuit abused its discretion by not considering all of the issues (intentional fraud, cover up and illegal surveillance of petitioner) and by improperly affirming the lower court's decision to dismiss this action:

   a. For lack of subject matter jurisdiction

   b. For failure to state a claim upon which relief can be granted

4. Whether the United States Supreme Court should be required by law to hear cases which are shocking to the conscience and considered "outrageous government conduct," especially those which claim *in terrorem populi*.

5. Whether this case should be decided on its merits and remanded back for trial to ensure due process.

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PETITION FOR WRIT OF CERTIORARI

Joan Heffington, and on behalf of her father, Major Jack G. Farr (U.S.A.F. Deceased) the petitioners *pro se* herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth District, entered in the above-entitled case on September 27, 2007.

OPINIONS BELOW

The September 27, 2007 opinion of the United States Court of Appeals for the Tenth Circuit whose judgment is herein sought to be reviewed, is reported

in Case No. 07-3096 on September 27, 2007, and is reprinted in Appendix A of this petition.

The United States District Court for the District of Kansas dismissed plaintiff's complaint and issued a Memorandum and Order granting the defendants' motion to dismiss on February 28, 2007, reprinted in Appendix B of this petition. A Notice of Appeal was filed by petitioner on March 27, 2007.

JURISDICTION

Petitioner filed suit in this matter on July 27, 2006 in the District Court for the District of Kansas. Her Motion for Leave to proceed *informa pauperis* was denied by Magistrate Judge K. Gary Sebelius on August 2, 2006. On August 11, 2006, petitioner filed a Motion to Recuse Judge Sebelius because he is the husband of Kansas Governor Kathleen Sebelius who is biased against her. Her Motion to Recuse was denied on August 30, 2006. Summons were returned by the U. S. Attorney and the Attorney General; however, three attempts were required to serve process on respondent Department of Defense (Secretary of Defense Donald Rumsfeld). Respondent United States Government failed to respond at any time. Respondent Department of Defense filed a Motion to Dismiss on October 12, 2006. Petitioner filed a Motion to Strike on October 31, 2006 due to defendant DOD's failure to sign and date the certificate of service. This was rendered moot, and final judgment of the District Court for the District of Kansas dismissing petitioner's complaint was entered on February 28, 2007. Petitioner filed an appeal with the United States

Court of Appeals for the Tenth Circuit on March 27, 2007. On September 27, 2007, the judgment of the United States Court of Appeals for the Tenth Circuit affirmed the district court's decision. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. @ 1257.

RELEVANT STATUTORY PROVISIONS

U.S. Constit. Amendment IV: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

U.S. Constit. Amendment V: "Nor shall any person ... be deprived of life, liberty, or property without due process of law."

U.S. Constit. Amendment VI: "In all criminal prosecutions,the accused shall enjoy the right to a speedy and public trial ... and to have the assistance of counsel for his defence."

U.S. Constit. Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

Civil Rights Act of 1964: (Equal Protection Clause)

Denial of Rights Under Color of Law, including 42 USC @1983: "...every person who, under color of any statute, ordinance, regulation, ...of any State,...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights...secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Communications Act of 1934

Electronic Communication Privacy Act (Stored Communications Act)

War Crimes Act of 1949 (Geneva Convention, Part 1, General Provisions, Article 3: "In the case of armed conflict not of an international character... (1) persons taking no active part in the hostilities, **including members of armed forces** who have laid down their arms and those placed hors de combat... shall in all circumstances be treated humanely...to this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

(a) Violence to life and person, in particular murder of all kinds...

Privacy Act of 1974 (5 USC @ 552a)

Foreign Intelligence Surveillance Act of 1978 (50 USC @1802 (a)(1): "Notwithstanding any other law, the President through the Attorney General may

authorize electronic surveillance without a court order under this subchapter to acquire **foreign intelligence information** for periods of **up to one year** if the Attorney General certifies in writing under oath that – (A) the electronic surveillance is solely directed at – (i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among **foreign powers...(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party...**

Paperwork Reduction Act of 1995 (Chapter 35, Title 44 USC, Section 3501 (1): "Minimize the paperwork burden for individuals...resulting from the collection of information by or for the federal government."

res ipsa loquitor – "the matter speaks for itself"

in terrorem populi – "to the terror of the people"

STATEMENT OF THE CASE

This case involves petitioner Joan Heffington's discovery of the wrongful death of her father, Major Jack G. Farr, in Viet Nam on July 27, 1965 and her continued persecution for pursuing truth and justice in this matter. Substantial evidence is attached to her complaint which supports her claims, but these have been ignored by the lower courts. This case does not relate back to Major Farr's death in 1965, but to the cover up of the circumstances surrounding his death when petitioner discovered the truth in August, 2004. Her claims are derivative of fraud

and conspiracy - the respondents' use of a false mission to fraudulently start a war that killed Major Farr and went on to kill over 55,000 servicemen, their fraudulent attempts to cover up her father's mission, and the illegal persecution of her through a warrantless National Security Letter that has continued since approximately January, 2003.

In this matter, as in two previous cases brought before this court, petitioner Joan Heffington continues to be denied the right to legal representation under the 6th Amendment to the U. S. Constitution. She alleges fraud-based claims, wrongful death, and tort of outrage against respondents the United States Government and the Department of Defense. Petitioners were denied their rights under the Civil Rights Act of 1964/42 USC 1983 and denied due process under the Fifth Amendment as applied to the states per the Fourteenth Amendment of the United States Constitution. For pursuing the truth in this matter, Mrs. Heffington was illegally put under surveillance by the defendants through a National Security Letter. This is the basis of her claims that respondents violated the Foreign Intelligence Surveillance Act of 1978 and violated petitioner's right to privacy under the 4th Amendment and the Privacy Act of 1974.

On July 27, 2006, petitioner filed a timely complaint in district court (within two years from the time she discovered the defendants' fraud) on behalf of herself and her deceased father. On October 12, 2006, defendant Department of Defense filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim for which

relief can be granted. Petitioner filed a motion to strike on October 31, 2006, due to respondent's failure to sign the pleading which resulted in insufficient service of process (ROA, Doc. 17). On November 6, 2006, respondent DOD filed a corrected motion to dismiss, and petitioner's motion to strike was rendered moot by the court. On December 1, 2006, Mrs. Heffington filed her response; however, the district court granted the defendant's motion to dismiss and judgment in their favor without considering the merits of the case on February 28, 2007. Petitioner filed a notice of appeal on March 27, 2007. The judgment of the U.S. Court of Appeals for the Tenth Circuit then affirmed the district court's decision on September 27, 2007.

Petitioner asks this court to adopt and incorporate into this Writ of Certiorari the arguments, cases and laws in Plaintiff's Response to Defendant Department of Defense's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (ROA, Doc. 22). Also, petitioner asks for incorporation of the arguments, cases and laws already stated in Plaintiff-Appellant's Reply to Brief of Appellee filed with the Tenth Circuit Court of Appeals on June 26, 2007. For historical value in this case, this court should review the two previous Writs of Certiorari which petitioner has brought before this court: Case No. 05-3372 (Writ No. 07-05) and 02-88617 (Writ No. 03-1051), since similar conspiracy claims apply in this matter as well.

REASONS FOR GRANTING THE WRIT

Pursuant to Rule 10 (a) & (c), the judgment of the United States Court of Appeals for the Tenth

Circuit affirming the lower court's decision should be reviewed by this Court for two compelling reasons: (1) the lower courts have so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power; and (2) the lower court failed to address many of the issues in this case, including intentional fraud, cover up and illegal surveillance of petitioner.

I. PETITIONER DENIED DUE PROCESS OF LAW UNDER 5TH & 14TH AMENDMENTS / CIVIL RIGHTS ACT OF 1964/42 USC1983 VIOLATED; ABUSE OF DISCRETION

In support of the Paperwork Reduction Act, petitioner incorporates the same arguments, cases and laws already stated in ROA Doc. 22 & Appellant' Reply Brief filed with the Tenth Circuit Court of Appeals on June 26, 2007. This court knows what the laws say, and they are reprinted in the Relevant Statutory Provisions of this writ. If petitioner has failed to state something in the preferred legal form and fashion due to her lack of legal expertise, this case should not be dismissed for such technicalities, especially when she has been denied legal representation. This matter is *res ipsa loquitor,* and the merits in this case should take precedence in order to protect the rights of all American citizens.

II. WAR CRIMES/INTENTIONAL FRAUD DEEMED CRIMINAL MATTERS/ PETITIONER HAD 6TH AMENDMENT RIGHT TO APPOINTED COUNSEL

In support of the Paperwork Reduction Act, petitioner incorporates the same arguments, cases and laws already stated in ROA Doc. 22 & Appellant' Reply Brief filed with the Tenth Circuit Court of Appeals on June 26, 2007. As in the petitioner's two previous cases, the respondents have influenced attorneys, numerous local, state and national agencies, government officials and the news media so that petitioner has been unable to acquire legal representation. The petitioner's right to due process was violated when the respondents colluded to deny petitioner legal representation in this matter as well. Discovery would have revealed this truth, if only it were allowed. In cases such as this, where the criminal intent of fraud, war crimes and wrongful death is clear and convincing, the court should have appointed effective assistance of counsel to petitioner. Due process is violated whenever the performance of counsel, whether retained or appointed, is so deficient as to render the proceedings fundamentally unfair. *U.S. v. Alvarez,* C.A.Ga.1978, 580 F.2d 1251. In this matter, petitioner's performance in acting as her own counsel without any legal training is more than deficient in rendering the proceedings fundamentally unfair.

III. LOWER COURT FAILED TO ADDRESS IMPORTANT ISSUES (FRAUD/COVER UP/ILLEGAL SURVEILLANCE) AND ABUSED ITS DISCRETION BY DISMISSING THIS ACTION

A. For Lack of Subject Matter Jurisdiction.

In support of the Paperwork Reduction Act, petitioner incorporates the same arguments, cases and laws already stated in ROA Doc. 22 & Appellant' Reply Brief filed with the Tenth Circuit Court of Appeals on June 26, 2007. The court should not have dismissed this case for lack of subject matter jurisdiction. If this court shouldn't hear it, who should? The United States is "generally" immune from civil law suits and may only be sued in circumstances where it has specifically and unequivocally waived its immunity. But any reasonable person would agree that it should waive its immunity and consent to be sued in this matter. A law should be enacted that when the government does something that is morally questionable, then the responsible executives, from the Commander-in-Chief on down, should lose their immunity. In this case, the government is ignoring its own law which holds that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *See Procunier v. Navarette*, 434 U.S. 555, 565, 98 S.Ct. 855, 861, 55 L.Ed.2d 24 (1978); *Wood v. Strickland*, 420 U.S., at 322, 95 S.Ct., at 1001. The respondents knew of Major Farr's right to life.

The Federal Tort Claims Act and the *Feres* Doctrine do not apply in this case, as petitioner has already stated. *Feres* does not apply in wrongful death actions when government misrepresentation is involved. Plaintiffs have unequivocally expressed the facts and attached evidence in this matter so as

to render this case an exception to the rule that the United States Government is traditionally immune from lawsuits. Even if the court did not agree, it is in the best interests of our nation to consent to be sued in this case, since dismissal is deemed egregious and only serves to exacerbate the general public's lack of trust and faith in our justice system.

B. For Failure to State a Claim Upon Which Relief Can Be Granted.

In support of the Paperwork Reduction Act, petitioner incorporates the same arguments, cases and laws already stated in ROA Doc. 22 & Appellant' Reply Brief filed with the Tenth Circuit Court of Appeals on June 26, 2007. Any reasonable person would believe after reading plaintiffs' complaint, that claims were clearly stated for which relief could be granted. Plaintiff contends that "failure to state a claim" is but a catch-all reason to dismiss any claim by a *pro se* litigant. If the United States Constitution has any legitimacy, then this case should go forward, particularly because it involves an executive branch that has lied and continues to lie with impunity. The Constitutional issues presented are the petitioners' and the American people's only safeguard. There is no reason why the actions of the government in this matter cannot be examined by the court.

The court also failed to address petitioner's 4th Amendment right to privacy, violations of the Privacy Act of 1974, Communications Act of 1934, the Electronic Communication Privacy Act, the War Crimes Act of 1949, and the Foreign Intelligence

Surveillance Act of 1978. Petitioner has been illegally persecuted by the respondents through an unwarranted National Security Letter (NSL), issued in approximately December, 2002. At that time, petitioner wrote to the president to try and acquire help for the wrongful persecution of her son through false/frivolous charges in Case No. 02-88617 (Writ No. 03-1051). The NSL, in violation of the Foreign Intelligence Surveillance Act, continues today. Any reasonable person who reads petitioner's complaint can see on its face that the claims are proven by a preponderance of the evidence attached. Can it be assumed then, that the judges thus far are unreasonable people? It would appear so.

IV. SHOCKING CASES INVOLVING OUTRAGEOUS GOVERNMENT CONDUCT SHOULD BE MANDATORILY HEARD BY U. S. SUPREME COURT

In support of the Paperwork Reduction Act, petitioner incorporates the same arguments, cases and laws already stated in ROA Doc. 22 & Appellant' Reply Brief filed with the Tenth Circuit Court of Appeals on June 26, 2007. Mrs. Heffington did not sue the United States government because her father was killed in a military combat operation. Her claims are derivative of fraud and conspiracy by the respondents who used her father and others as sacrificial lambs. For "outrageous" government conduct to succeed, it must be shown that challenged governmental conduct violated fundamental fairness and was shocking to a universal sense of justice

mandated by the due process clause. *U.S. v. Haimowitz,* C.A.Fla.1984, 725 F.2d 1561, certiorari denied 105 S. Ct. 563, 469 U.S. 1072, 83 L.Ed.2d.504. What could be more shocking than the respondents' use of a false mission to start a war that killed petitioner's father and over 55,000 servicemen, fraudulent attempts to cover up the mission, and illegal issuance of a National Security Letter against petitioner for seeking truth and justice? Such outrageous government conduct in a civilized society should not be tolerated, and such cases should be mandatorily heard by our highest court.

V. CASE SHOULD BE DECIDED ON ITS MERITS AND REMANDED BACK FOR TRIAL TO ENSURE DUE PROCESS

In this matter, the respondents have not come forth with anything to prove that petitioner's claims are untrue. The lower courts make a mockery of justice by failing to ask for any discovery and dismissing this case on technicalities without even considering the merits or evidence attached. Denial of due process in this matter has resulted in manifest injustice toward the petitioner. Outrageous government conduct which authorizes war based on unjustified, erroneous and fraudulent attacks of other countries resulting in loss of life without due process of law must not be allowed to continue. If the respondents actually believe that they have the right of discretion to mislead and lie to people such that it leads to their death, then any reasonable person would agree that abuse of

discretion occurred in this case. It is also an abuse of discretion by the president and the federal government to intervene in cases at the state level and to deny petitioner media attention, allowing politics to enter in and circumvent the court system so that justice does not prevail. With the denial of petitioner's two previous writs of certiorari, it is obvious to any reasonable person that the president is deciding which cases are heard at the United States Supreme Court level.

The due process clause of Amendment XIV and Amendment V are directed at the protection of the individual, who is entitled to the immunity thereof as much against the state as against the national government. *Curry v. McCanless, Tenn.* 1939, 59 S.Ct. 900, 307 U.S. 357, 83 L.Ed.1339. Petitioner has suffered extreme mental anguish for over 40 years due to the defendants' acts/failures to act which caused the unnecessary loss of her father's life. If left unheard by this court, it appears acceptable for our government to start wars based on fraudulent reasons, to arrogantly send brave men into false battles to die needlessly, to deny innocent people the right to justice for seeking the truth, to persecute them wrongly and invade their privacy for pursuing justice, and to cause them extreme and unwarranted emotional distress/mental anguish. Clearly, the voices of the people continue to be silenced in America, and this case is "*in terrorem populi.*"

This court should not allow our government to continue such arrogance, and an independent watchdog agency is needed to rein in the illegal and unethical activities of our government. A

constitutional amendment is needed: (1) to prevent the government from violating constitutional rights of citizens; (2) to ensure that the government abides by the same laws as citizens; (3) to protect parties in interest that are denied the right to be heard; (4) to protect the overall integrity of the system of justice; and (5) to ensure that justice prevails in our legal system.

This court should decide this case on its merits and remand it back for trial to ensure due process. The judicial system has a strong predisposition to resolve cases on their merits. *Meade v. Grubbs, 841 V.2d 1520 n.7 (10th Cir. 1988).* Petitioner should be made whole for her losses through money damages, an apology, and an F-105 memorial/ induction into the National Aviation Hall of Fame in honor of Major Jack G. Farr. He should be properly honored for not only dying needlessly for his country as did so many after him, but because he died trying to save another man's life.

CONCLUSION

For all of the aforementioned reasons, petitioner respectfully prays that this petition for a writ of certiorari be granted. If this court will deny petitioner justice and the right to be heard, then government "of the people, by the people and for the people" has already perished from this earth.

Respectfully submitted,

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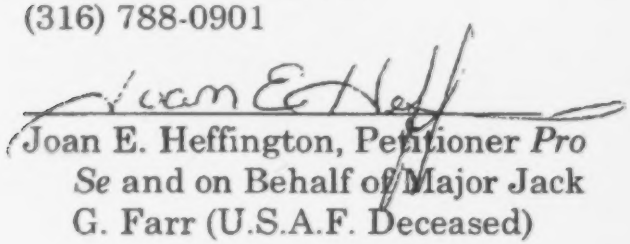

Joan E. Heffington, Petitioner *Pro Se* and on Behalf of Major Jack G. Farr (U.S.A.F. Deceased)

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOAN (FARR) HEFFINGTON,
Individually and On Behalf of Major
Jack G. Farr (U.S.A.F. Deceased),

Plaintiff-Appellant,

v.

DEPARTMENT OF DEFENSE OF
THE UNITED STATES,

Defendant-Appellee.

No. 07-3096
D.C. No. 06-CV-4081-RDR
(D. Kan.)

ORDER AND JUDGMENT *

Before **HARTZ**, Circuit Judge, **BRORBY**, Senior Circuit Judge, and **TYMKOVICH**, Circuit Judge.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Joan (Farr) Heffington, proceeding *pro se*, appeals from the district court's order dismissing her complaint in part for lack of subject matter jurisdiction and in part for failure to state a claim upon which relief can be granted. We exercise jurisdiction pursuant to 28 U.S.C.@1291, and we affirm.

Ms. Heffington filed a pro se complaint seeking damages arising out of the death of her father, who was killed in military action during the Vietnam War. She brought claims on behalf of herself and her deceased father against the United States Department of Defense for violations of several federal statutes, for constitutional violations, and for violations of state law. The district cout determined that all claims asserted by Ms. Heffington on behalf of her father "must bc dismissed because [Ms. Heffington], who is not an attorney, has no legal right to assert a claim on his behalf." R. Doc. 23 at 4. The district court also dismissed the federal claims brought by Ms. Heffington on her own behalf, concluding that (1) the claims were barred by the Feres Doctrine; (2) Ms. Heffington failed to state a claim under the Federal Tort Claims Act; (3) any claims against the United States for constitutional violations must be dismissed because the United States had not waived its sovereign immunity for constitutional torts; and (4) her federal statutory claims failed to state a claim upon which relief could be granted. The district court declined to exercise supplemental jurisdiction over the remaining state law claims and dismissed those claims without prejudice.

Having reviewed the briefs, the record, and the

relevant legal authority, we conclude that the district court correctly decided this case. Accordingly, we AFFIRM the district court's decision for substantially the same reasons stated in the district court's Memorandum and Order dated February 28, 2007.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOAN (FARR) HEFFINGTON,
Individually and On Behalf
of Major Jack G. Farr
(U.S.A.F. Deceased),

Plaintiff,

vs. Case No. 06-4081-RDR

DEPARTMENT OF DEFENSE OF
THE UNITED STATES,

Defendant.

MEMORANDUM AND ORDER

This matter is presently before the court upon defendant's motion to dismiss or, in the alternative, motion for summary judgment. In its motion, the defendant contends that plaintiff's action should be dismissed for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1) and failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Having carefully reviewed the arguments of the parties, the court is now prepared to rule.

In her complaint, plaintiff, proceeding pro se, seeks damages for the death of her father, who was killed in action during the Vietnam war. She brings this action on her own behalf and on behalf of her

father. She has named two defendants: the United States Government and the United States Department of Defense (DOD).[1] She raises a variety of federal claims as well as several state law claims, but all spring from the death of her father in Vietnam in 1965. She alleges that her father's death was caused by the intentional and fraudulent plan of the United States government to escalate the war in Vietnam. She further alleges that the defendants intentionally and fraudulently concealed the truth about their earlier actions from her and her family.

In its motion, the defendant contends that dismissal is appropriate because: (1) the Feres Doctrine precludes plaintiff's lawsuit; (2) the statute of limitations bars plaintiff's action; (3) the court lacks subject matter jurisdiction under the Federal Tort Claims Act (FTCA); (4) plaintiff has failed to exhaust her administrative remedies; and (5) plaintiff has failed to state a claim upon which relief can be granted.

Under Fed.R.Civ.P. 12(b)(1), a motion to dismiss may be granted if the court does not have subject matter jurisdiction over the matter. The determination of subject matter jurisdiction is a threshold question of law. Madsen v. United States ex. Rel. United States Army Corps of Engineers, 841 F.2d 1011, 1012 (10th Cir. 1987). "[T]he party invoking federal jurisdiction bears the burden of

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1 The United States DOD must be dismissed as a defendant. The DOD is not a judicial entity separate from the United States. Martinez v. Winner, 771 F.2d 424, 442 (10th Cir.), modified on other grounds, 778 F.2d 553 (1985), vacated on other grounds, 475 U.S. 1138 (1986).

proof." Marcus v. Kansas Dept. of Revenue, 170 F.3d 1305, 1309 (10th Cir. 1999).

Dismissal for failure to state a claim upon which relief can be granted under Fed.R.Civ.P. 12(b)(6) is appropriate only when "it appears beyond a doubt that the plaintiff can prove no set of facts in support of [its] claims which would entitle [it] to relief," Beedle v. Wilson, 422 F.3d 1059, 1063 (10th Cir. 2005) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)), or when an issue of law is dispositive, Neitzke v. Williams, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, and all reasonable inferences from those facts are viewed in favor of the plaintiff. Beedle, 422 F.3d at 1063. The issue in resolving such a motion is "not whether [the] plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 511 (2002) (quotation omitted).

Because plaintiff is a pro se litigant, the court must construe her pleadings liberally and apply a less stringent standard than that which is applicable to attorneys. Whitney v. New Mexico, 113 F.3d 1170, 1173 (10th Cir. 1997). But the Tenth Circuit "'has repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants.'" Garrett v. Selby, Connor, Maddux & Janner, 425 F.3d 836, 840 (10th Cir. 2005) (quoting Nielsen v. Price, 17 F.3d 1276, 1277 (10th Cir. 1994)). While courts must "make some allowances for 'the [pro se] plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his

unfamiliarity with pleading requirements [,]' the court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." Id. (quoting Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)). The court may not assume that a plaintiff can prove facts that have not yet been alleged, or that a defendants has violated laws in ways that a plaintiff has not alleged. Associated General Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983).

There are a number of reasons why dismissal of this action is appropriate. In order to reduce the length of this opinion, the court shall only focus on a few of the reasons why dismissal is proper.

The court shall begin with all claims asserted on behalf of her father. These claims must be dismissed because plaintiff, who is not an attorney, has no legal right to assert a claim on his behalf. See 28 U.S.C.@1654 ("parties may plead and conduct their own cases personally or by counsel"); Warth v. Seldin, 422 U.S. 490, 499 (1975) ([T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."). 2

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2 Even if we were to reach the claims asserted by plaintiff on behalf of her father, we would find that they are subject to dismissal for at least the following reasons: (1) barred by the Feres Doctrine, see Feres v. United States, 340 U.S. 135 (1950); (2) barred by the statute of limitations, see 28 U.S.C. @ 2401 (b); (3) failure to exhaust administrative remedies, see 28 U.S.C. @ 2675 (a); and (4) failure to state a claim upon which relief can be granted.

To the extent that plaintiff has properly asserted other claims on her behalf, the court finds they are also subject to dismissal for several reasons. First, they are barred by the Feres Doctrine. See Tootle v. USDB Commandant, 390 F.3d 1280, 1281 (10th Cir. 2004) ("In Feres, the Supreme Court held that members of the military cannot bring claims against the government under the Federal Tort Claims Act where the injuries arise out of or are in the course activity incident to service. The Feres Doctrine has since been expanded to bar claims for damages by members of the military for constitutional violations that occur in connection with their military service."). Moreover, the Feres Doctrine has been extended to claims asserted by family members of military personnel based upon injuries to service personnel. See West v. United States, 729 F.2d 1120, 1122 (7th Cir.), vacated on other grounds, 744 F.2d 1317 (7th Cir. 1984) (en banc), cert. denied, 471 U.S. 1053 (1985). In sum, the court lacks subject matter jurisdiction to consider any claims arising from the death of plaintiff's father in Vietnam while he was serving in the military.

Second, plaintiff has failed to state a claim under the FTCA, 28 U.S.C. @ 1346(b), 2679(a). The FTCA is available as a remedy for certain torts committed by the United States, but plaintiff did not seek to plead a claim under this statute, nor does it appear that she can do so now, because she has not preserved her rights by filing an administrative claim within the time limit provided.

Finally, the court must dismiss plaintiff's claims against the United States for constitutional violations because the United States has not waived

its sovereign immunity for constitutional torts. Martinez, 771 F.2d at 442. [3]

With the dismissal of the federal claims, the court shall decline to exercise supplemental jurisdiction over the remaining state law claims. See 28 U.S.C.@1367(c); Smith v. City of Enid, 149 F.3d 1151, 1156 (10th Cir. 1998) ("When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims."). Accordingly, plaintiff's state law claims shall be dismissed without prejudice.

IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. # 18) be hereby granted. Plaintiff's complaint is dismissed in part for lack of subject matter jurisdiction and in part for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

Dated this 28th day of February, 2007 at Topeka, Kansas.

s/Richard D. Rogers
United States District Judge

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3 The court notes that plaintiff makes reference to several federal statutes in her complaint. She, however, fails to indicate in what manner these statutes were violated or how she is entitled to relief under them. The court finds that plaintiff has failed to state a claim under which relief can be granted on the statutes referenced in her complaint. The court also notes that plaintiff has indicated in her response to the defendant's motion to dismiss that she is asserting a claim under the Privacy Act of 1974. Accordingly, the court again finds that plaintiff has failed to state a claim upon which relief can be granted.

APPENDIX C

MISCELLANEOUS DOCUMENTS

Photos of Major Farr and family....EXHIBIT A

EXHIBIT A

Von Ihren Freunde
Major Jack G. Fox